

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of State Parks
Honolulu, Hawai'i 96813

September 23, 2011

Board of Land and Natural Resources
State of Hawai'i
Honolulu, Hawaii

Kaua'i

Consent to Extension of Lease Term, General Lease No. S-4968, Smith's Motor Boat Service, Inc., Lot 21, Wailua Rice and Kula Lots, Wailua Marina State Park, Wailua, Lihu'e (Puna), Kaua'i.

APPLICANT AND REQUEST:

Lessee, Smith's Motor Boat Service, Inc., for an extension to amortize self-financed improvements pursuant to Sections 171-36(b) in the amount of \$650,000.00. In order for Lessee to amortize this expenditure, Lessee requests an extension of General Lease No. S-4968 for a term of Twenty (20) years, commencing on July 3rd, 2020 and expiring on July 2nd, 2040 for an aggregate term (initial term plus all extensions) of 55 years.

LEGAL REFERENCE:

Sections 171-17, 36(b), and 41 and other applicable sections of Chapter 171, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands at the Wailua River State Park, Lot 21, Wailua Rice and Kula Lots, Wailua, Lihu'e (Puna), Kaua'i, identified as indicated on the attached survey description and map labeled Exhibit A

AREA:

22.16 acres, more or less, subject to confirmation by the Department of Accounting and General Services, Survey Division.

ZONING:

State Land Use District: Conservation
County of Kaua'i CZO: Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES _____ NO x

ITEM E-1

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CURRENT USE STATUS:

Leased to Smith's Motor Boat Service, Inc. under General Lease S-4968, terminating July 2nd, 2020, and encumbered by Governor's Executive Order 4260 to the Division of State Parks for addition to the Wailua River State Park.

CHARACTER OF USE:

Commercial purposes. Pursuant to the terms of the lease, the Lessee shall use or allow the premises hereby demised to be used solely for the purpose of operating a floral garden and allied facilities.

LEASE TERM:

The existing lease term is for a period of thirty-five (35) years, commencing on July 3rd, 1985 and terminating on July 2nd, 2020. The requested extension is for a term of twenty (20) years commencing July 3rd, 2020 and ending July 2nd, 2040 for a total term (initial term plus extension) of fifty-five (55) years.

COMMENCEMENT DATE:

The date of commencement of the extension shall be July 3, 2020, provided that the Chairperson may amend the commencement date for good cause.

MINIMUM ANNUAL RENT:

To be determined by staff or independent appraisal establishing fair market rent, subject to review and approval by the Chairperson.

PERCENTAGE ANNUAL RENT:

Percentage of gross revenue from all sources within the leased premises, excluding State excise tax. Percentage to be determined by staff or independent appraisal establishing fair market rent, subject to approval by the Chairperson.

METHOD OF PAYMENT:

Semi-annual payments, in advance.

RENTAL REOPENINGS:

If approved, the extension will require an immediate rental re-opening. The next re-openings will be September 1, 2021 and September 1, 2031 and shall be completed by staff or independent appraisal. The applicant will be required to pay for an appraisal for the immediate rental re-opening.

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PERFORMANCE BOND:

Twice the annual rental amount.

MINIMUM IMPROVEMENTS:

Within two (2) years from the date of the Board's approval of this extension, if approved, the Lessee shall have completed the construction of the improvements described herein having a value of not less than \$650,000. Said improvements shall be in accordance with plans submitted to the Chairperson for approval prior to their construction.

IMPROVEMENT BOND:

An amount equal to the cost of improvements.

RENT WAIVER:

None.

PROPERTY CHARACTERISTICS:

- | | |
|----------------------------|---|
| Utilities - | The premises are served by independently metered electrical service and serviced by a water line supplied by the State. The lessee shall be responsible for its own water and sewer charges and usage and shall immediately work with the Division of State Parks to effect the use of sub-meters or independently metered water and sewer service. |
| Existing Improvements - | The premises include buildings, improvements and structures used in the operation of a floral garden and allied uses. |
| Legal access to property - | Staff has verified there is legal access to the property off of Kuhio Highway. |
| Subdivision -- | The premises are located within the Wailua River State Park. |
| Encumbrances -- | Staff has verified that the following encumbrances exist on the property: General Lease to Smith's Motor Boat Service, Inc., S-4968, dated September 11, 1986 for a term of thirty-five (35) years commencing July 3rd, 1985, and Governor's Executive Order 4260 to the Division of State Parks for addition to the Wailua River State Park. |

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

State Parks believes that this project will have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment under Chapter 343, Hawaii Revised Statutes (HRS) and §11-200-8(a)(1), Hawaii Administrative Rules (HAR) and within exemption Class 1, Numbers 2 and 6 of the State Parks Exemption List which exempts

operations involving negligible or no expansion or change of use beyond that previously existed within park boundaries [February 5, 1976].

REMARKS:

On July 3, 1985, General Lease No. SGL4968 was sold at public auction to Smith's Motor Boat Service, Inc., ("Smiths"), for a period of thirty-five (35) years based on a minimum upset rental as determined by appraisal. The lease commenced July, 3rd 1985 and terminates July 2nd, 2020. Pursuant to the terms of the auction and lease, the awarded bidder, Smith's, was required to make a minimum of \$302,000 in improvements on the premises including:

1. Paving and resurfacing of interior roadways.
2. Installing and repairing a pipeline and sprinkler systems.
3. Identifying and labeling all plants.
4. Constructing new restroom facilities, repair the luau pavilion and the stage at the lagoon theatre, and repair the lagoon theater building.
5. Making repairs to the caretaker's residence on the property.

Files indicate that Smith's obtained a mortgage from Bank of Hawai'i dated February 4, 1987 in the amount of \$790,055 for improvements to the premises.

On October 24, 2008, (Agenda Item D-3), the Board recommended the Governor set aside land, including the leased premises, to the Division of State Parks for addition to the Wailua River State Park. Subsequently, the lease was transferred to the Division of State Parks from the Land Division, pursuant to Governor's Executive Order No. 4260 on January 28, 2009.

Today, Smith's operates what is known as the "Smith Family Garden Luau" with as many as 500 attendees per day, or more, and is arguably, one of the most successful visitor attractions on Kaua'i. Over the last twenty-six (26) years or so, however, the improvements have somewhat deteriorated and erosion has affected the lagoon areas. If left unchecked, this condition will hamper the luau operation and upon termination of the lease, the State will be left with significant costs to restore the property to its previous condition. The lease has approximately eight (8) years and ten (10) months remaining.

Smith's requests a term extension pursuant to Section 171-36(b) to amortize \$650,000 in self-financed improvements necessary to be completed today, but have a useful life beyond the existing term of the lease and cannot be feasibly amortized during the remaining term of the existing lease. Originally, when Smith's contemplated these improvements, it sought conventional debt financing and obtained a tentative loan commitment from Bank of Hawai'i in the amount of \$1,400,000 to finance the improvements. In order to reduce the cost of the improvements, Smith's plans to make many of the improvements 'in-house' with their own labor and was able to reduce the amount to \$650,000. Pursuant to a July 13, 2010 letter from Bank of Hawai'i, Smith's was required to obtain an additional twenty-five (25) year extension to the lease (see Exhibit B). The extended term was necessary to amortize the cost of the loan and to meet additional underwriting requirements.

The planned improvements include:

1. Stabilization to the lagoon banks and water circulation.
2. Improvements and repairs to the Luau Hale Pavilion.
3. Repair and upgrades to the Lagoon Theater.
4. Restroom expansion to match the existing capacity.
5. Kitchen upgrades and repairs.
6. Repaving walking paths and cart transportation structure in the gardens.

State Parks confirms that Smith's has operated the property substantially for the purpose for which they were originally leased and has made site inspections of the property.

Comments were solicited from:

<u>Agency</u>	<u>Comments</u>
DLNR - Boating Division	None received
DLNR- Land Division	None received
Kaua'i County Planning Department	None received
DLNR – OCCL	None received
Office of Hawaiian Affairs	None received

RECOMMENDATION: That the Board:

1. Authorize the extension of General Lease No. S-4968 under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. Lessee shall complete all improvements described herein with a period of two years from the date of the Board's approval of this extension;
 - b. Lessee shall submit to the Division of State Parks, receipts or reports verifying payment for the improvements by September 23, 2013, or the lease extension shall be subject to cancellation;
 - c. Lessee shall obtain all necessary permits and/or other governmental approvals for said improvements and shall submit plans to the Division of State Parks for approval prior to the work being completed;
 - d. The standard terms and conditions of the most current lease extension form, as may be amended from time to time;
 - e. Review and approval by the Department of the Attorney General; and
 - f. Such other conditions as may be prescribed by the Chairperson which are in the best interests of the State.

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2. Declare that after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.


Respectfully Submitted,



Daniel S. Quinn
State Parks Administrator

For

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

September 23, 2011

Exhibit A - Land Description and Map



KANAI FILE
CARTON 27
C.S.P. No.

STATE OF HAWAII
SURVEY DIVISION
DEPT. OF ACCOUNTING AND GENERAL SERVICES
HONOLULU

October 31, 1961

WAILUA RICE AND KULA LOTS

LOT 21

(Revised October 1961)

Wailua, Lihue (Puna), Kauai, Hawaii

Being a portion of the Government (Crown) Land of Wailua

Beginning at the southwest corner of this lot, the southeast corner of Lot 22, Wailua Rice and Kula Lots and on the north side of Government Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "WENOU" being 5404.90 feet South and 2699.70 feet East, as shown on Government Survey Registered Map 2699, thence running by azimuths measured clockwise from True South:-

1. 156° 09' 570.50 feet along Lot 22, Wailua Rice and Kula Lots;
2. 252° 00' 1058.72 feet along Wailua River Reserve (Executive Order 1771);
3. 300° 00' 1026.94 feet along Wailua River Reserve (Executive Order 1771);
4. 16° 55' 350.44 feet along Lot 20, Wailua Rice and Kula Lots;
5. 100° 36' 399.30 feet along Government Land;
6. 116° 59' 200.10 feet along the north side of Government Road;
7. 95° 53' 427.90 feet along the north side of Government Road;
8. 69° 50' 604.20 feet along the north side of Government Road to the point of beginning and containing an Area of 22.16 Acres.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

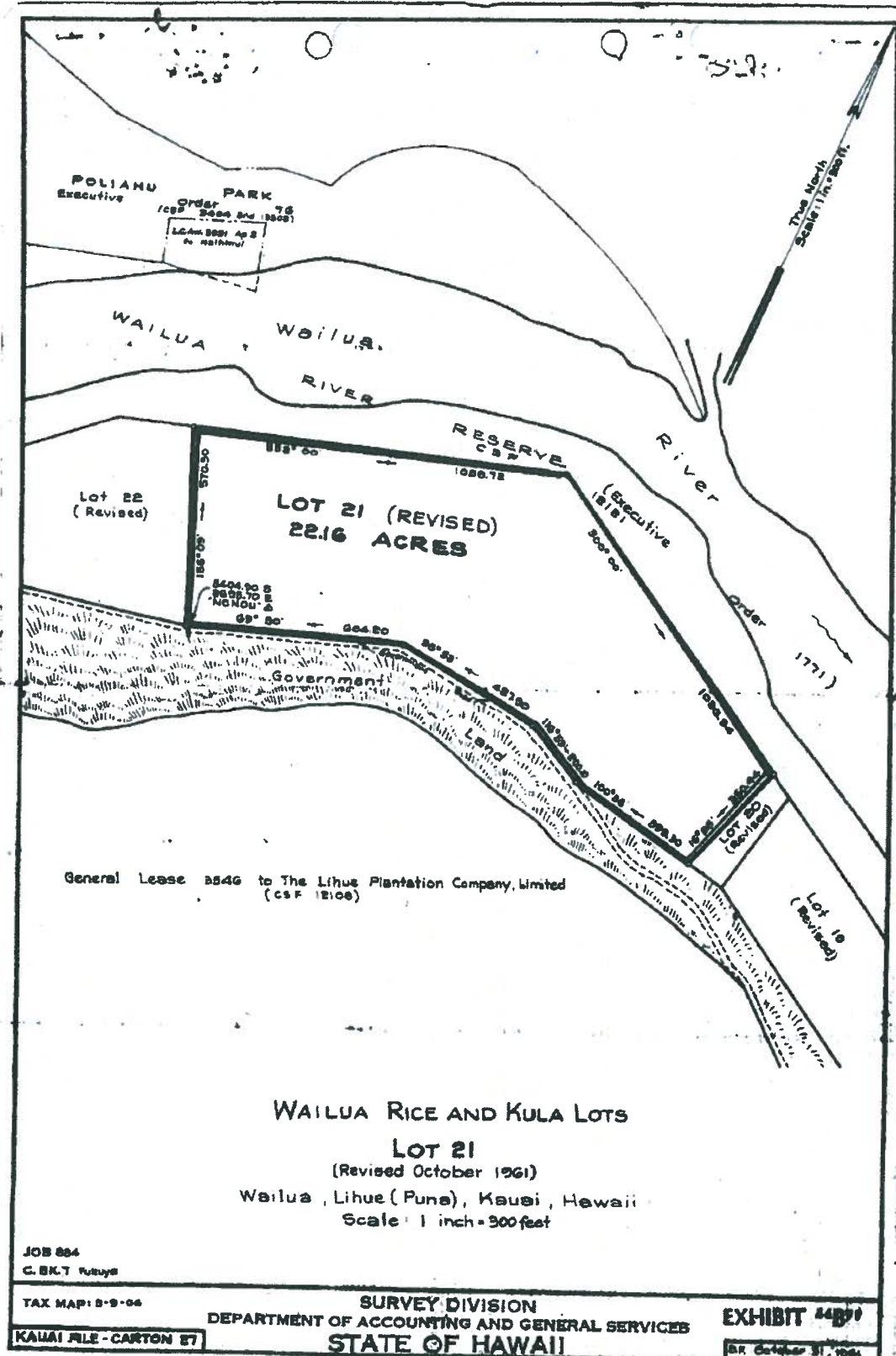
Compiled from Govt.
Survey Records.

By: *Osamu Fukaya*
Osamu Fukaya
Land Surveyor

EXHIBIT "A"

11/2/61

September 23, 2011



September 23, 2011

Exhibit B - Loan Letter (Bank of Hawai'i)

RECEIVED
STATE PARKS DIV

 **Bank of Hawaii**

11 AUG -2 AM '13

July 13, 2010

DEPT OF LAND &
NATURAL RESOURCES

Mr. Walter Smith, Jr.
President
Smith's Motor Boat Service, Inc.
174 Wailua Road
Kapaa, HI 96746

RE: Capital Improvement Financing and Leasehold Property

Dear Freckles,

Thank you for meeting with Sonia and me to discuss the capital improvement financing needs for the Smith's Garden Luau and Park operations.

We discussed several specific financing needs of which utmost priority is to repair and rebuild the banks on seven of the lagoons that are in various stages of erosion. Estimated cost for the project is \$1.4 million though updated quotes are being obtained. Other financing needs included re-roofing the Luau Hale and theatre dressing room, rebuilding the theater stage, a new office to replace the existing recycled home and termite treatment of facilities.

Financing for these types of capital improvements are best facilitated with a commercial real estate mortgage loan. These credit facilities typically are amortized over a 20 to 25 year period provided that ownership of the property is fee simple. In the case of a leasehold property, the amortization period is governed by the remaining known fixed rent period on the lease. The longest amortization period our bank will offer is 80% of the known fixed rent period of the land lease.

For example, if your existing lease has a known fixed rent period of 5 years with a remaining lease term of 10 years, the amortization period of the proposed financing will be 4 years or less.

Therefore, if you are seeking commercial mortgage financing with a 20 year amortization period for the proposed capital improvements on leasehold property, your lease will need to have a known fixed rent period and a lease term of at least 25 years.

The longer the known lease rent period and assuming that lease is at favorable rates, the more flexibility a lender will have in providing financing for your project. The amount of financing is also subject to a satisfactory updated valuation on the property that is within the lender's loan to value guidelines.

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I hope this letter clarifies the topic of lease term and loan amortization. Please contact me at (808) 694-6068 should you have additional questions or require further information. We look forward to working with you.

Sincerely,

BANK OF HAWAII



Cheryl Minaai
Vice President & Commercial Banking
Officer

cc: Sonia Topenio